

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

ROWAN COMPANIES, INC.,

Plaintiff,

v.

NO. 1:95CV18-S-D

RONNIE HEROD,

Defendant.

OPINION

In this declaratory judgment action, the plaintiff seeks a determination regarding its maintenance and cure obligations to the defendant. Presently before the court is defendant's motion to dismiss.

BACKGROUND

The defendant, Ronnie Herod, was injured on October 31, 1993, while working on one of plaintiff's offshore rigs. Since the date of the accident, defendant has been receiving maintenance and cure from plaintiff. On January 19, 1995, defendant filed the instant complaint pursuant to 28 U.S.C. § 2201. A month later, defendant answered and stated his intention of filing suit against plaintiff. On March 10, 1995, defendant filed suit in the United District for the Southern District of Texas, seeking to recover damages under the Jones Act and general maritime law for his alleged injuries and specifically asserting his right to maintenance and cure benefits. Defendant also invoked his jury trial rights. A week later, defendant filed the instant motion to dismiss, arguing that the

issues presented here can be fairly and expeditiously determined in the Texas district court proceeding and that allowing this action to continue in this court interferes with his right to a jury trial in Texas. In response, plaintiff argues that defendant's choice of Texas in which to litigate his Jones Act claims is incredibly inconvenient and is in fact retaliation for bringing the instant suit, thereby militating against dismissal.

DISCUSSION

"Declaratory relief is a matter of district court discretion." Torch, Inc. v. LeBlanc, 947 F.2d 193, 194 (5th Cir. 1991). Among the factors which the court may consider in determining whether to entertain a declaratory judgment action are

- (1) whether there is a pending state court proceeding in which the matters in controversy between the parties may be fully litigated;
- (2) whether the declaratory judgment complaint was filed in anticipation of another suit and is being used for the purpose of forum shopping;
- (3) whether there are possible inequities in permitting the declaratory plaintiff to gain precedence in time and forum; and
- (4) whether the parties or witnesses will be inconvenienced.

Torch, 947 F.2d at 194. This list "is neither exhaustive, nor is it exclusive or mandatory," Granite State Insurance Co. v. Tandy Corp., 986 F.2d 94, 96 (5th Cir. 1992), and therefore, another "significant" factor which weighs in favor of denying declaratory relief is "that a maintenance and cure claim joined with a Jones Act claim must be submitted to a jury when both arise out of one set of facts." Rowan Companies, Inc. v. Griffin, 876 F.2d 26, 29 n.3 (5th Cir. 1989).

The court has considered the pertinent factors and finds that dismissal of this action is appropriate as the suit filed in Texas federal court "will not only completely resolve all maintenance and cure issues currently before this [c]ourt, but failure to dismiss the declaratory suit will deprive [defendant] of the opportunity to have a jury decide his Jones Act claim with his maintenance and cure claim." Rowan Companies, Inc., v. Blanton, 764 F. Supp. 1090, 1093 (E.D. La. 1991). With regard to plaintiff's extensive forum non conveniens argument, the court notes that although convenience is a factor in determining the viability of a declaratory judgment action, it is not the only factor. Plaintiff has filed the appropriate motion with the Texas court challenging its venue, and that court will, in due course, consider the merits of the motion. As to the timing of defendant's federal court complaint, the court does not find this particularly significant. See, e.g., Blanton, 764 F. Supp. at 1091, 1093 n.3. (seaman filed Jones Act suit approximately one month after declaratory judgment suit was instituted; court found this not to be "distinction" requiring retention of declaratory action).

An appropriate final judgment shall issue.

This _____ day of July, 1995.

CHIEF JUDGE